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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/758,369

01/15/2004

David L. Varner

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10/11/2006

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EXAMINER

YEAGLEY, DANIEL S

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/758,369

Applicant(s)

VARNER, DAVID L.

Examiner

Daniel Yeagley

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1, 2 and 15-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1, 2 and 15-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/17/06. However, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Drawings***

2. The drawings are objected to because:

Figure 1C should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

Figure 3D; appears to be incorrectly drawn because the anti-rattle assembly appears to be drawn on the wrong side of the pin aperture and therefore would prevent the pin apertures of the hitch mount and the receiver hitch from lining up.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second parts of the support 30 being telescopic as cited in claims 4 and 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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4. the drawings filed 7/1/04 appear to be missing numerous figures in conjunction with their brief description as cited throughout in the specification; e.g.; figure 1 should be 1A and the following figures from the newly submitted drawings according to the specification are missing: figure 1, 1D through 1I, 2A, 3A, 4B, 5A, 5B, 6, 10B, 10C, 11B, 13A, 13B and 16A.

5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Information Disclosure Statement***

6. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Specification***

7. Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. Correction is required. See MPEP § 608.01(b).

8. The disclosure is objected to because of the following informalities:

Page 12, line 23, numeral "22" should be changed to numeral 30.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Appropriate corrections are required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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10. Claims 12 – 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Regarding claim 12(iii), it is unclear from the drawings and the specification how the exercise equipment mounting apparatus 24 is pivotal about an elongated axis of the member as claimed. It appears from the drawings that the member and the mounting apparatus are fixedly attached to one another. It is also unclear how the adjustment about the support axis can facilitate leveling of the exercise equipment. It appears that the slidable adjustment would only adjust the distance between the apparatus and the vehicle.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 3 – 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3, line 8 and line 10, the terms “said apparatus” lack sufficient antecedent basis because it is unclear which apparatus the applicant is referencing, the apparatus supported by the free end of the member or the exercise apparatus attached thereto.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 3 – 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Davy '656.

Davy show a support system comprising a support that defines an elongated axis and extends generally horizontal with a first end configured for attachment to a receiver hitch 22 on a vehicle and includes a member 12 connected toward a second end of the support which is fixedly attached from the support and extends upwardly from the support, wherein an apparatus (exercise mounting apparatus 36) is supported toward a free upper end of the member to permit selective positioning and facilitate attachment of an exercise equipment thereon (exercise apparatus; i.e.; canoe), such that the exercise mounting apparatus and the member are vertically adjustably interconnected (figure 3 – 4), wherein the apparatus extends upward from and at an angle in a range between *about* 90 degrees relative to the support and includes a mounting mechanism (at numeral 50) which is configured to permit attachment of the exercise apparatus, wherein the support includes first and second parts; as best understood, that are arranged telescopically relative to each other *whereby* allowing the exercise apparatus to be positioned at different distances from the vehicle in a variety of selected linear positions for releasable attachment of the parts 22 and 14 by an attachment mechanism (pin and various apertures between the support and the receiver hitch; figure 1 and 3), and wherein a mounting apparatus of Davy is adjustably secured toward the free end of the member and is movable along the axis of the member and the axis of the support; as best understood, as claimed.

### *Conclusion*

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15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Maursetter '392, Allen et al '580, Hirschfield '189, Lane et al '983, Allsop et al '119, Young et al '636, Swain '424 and Callegari '578 show a support in a hitch of a vehicle.

Roberts '593, Kulik '901 and Hippensteel '533 show exercise equipment mounted on a receiver.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

D.Y.

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